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7590 10/10/2007
Dilworth & Barrese
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| EXAMINER |
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HURLEY, KEVIN

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| ART UNIT | PAPER NUMBER |
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3611

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10/10/2007

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/521,543

Applicant(s)

SEGERLJUNG, MAX

Examiner

Kevin Hurley

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 6-25 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 6-11, 15, 17-19, 21, 22, 24 and 25 is/are rejected.
- 7) ☒ Claim(s) 12-14, 16, 20, 23 is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. ____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. ____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date ____ | 6) <input type="checkbox"/> Other: ____ |

DETAILED ACTION

Claim Objections

1. Claims 8-12, 16-19 are objected to because of the following informalities: Claims 8 and 16 depend from canceled claim 1. They have been treated as though they depend from claim 6. Appropriate correction is required.

Claim Rejections - 35 USC § 112

2. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

3. Claims 24-25 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

In claim 24 line 1 “the control device” lacks antecedent basis.

4. Claim 17-19 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the enablement requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention.

Regarding claim 17 the claim recites that “the forks are arranged laterally displaceably on a frame with respect to the vehicle's normal driving direction, and that the vehicle comprises power means arranged to give rise to displacement of the forks along the frame.” No structure is

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disclosed which would allow this to happen. An actuator 11 is shown schematically but there is no disclosure as to how the forks are mounted to frame 10 and how the actuator would move both of them.

Claim Rejections - 35 USC § 102

5. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

6. Claims 6-11, 15 are rejected under 35 U.S.C. 102(b) as being anticipated by Cradeur 4,666,365.

Cradeur (see Figs. 2-4) discloses a vehicle comprising:

a chassis, at least three wheels W arranged to support the chassis while resting on the ground,

a lifting unit O connected to the chassis and having one or more members arranged to carry loads and a power arrangement to raise and lower the load-carrying members relative to the chassis,

a beam 80 carrying the lifting unit and pivotally connected to the chassis about a first substantially horizontal axis 30i extending between at least two of the three wheels, and the power arrangement comprising first power means 80g arranged to pivot the beam around this axis relative to the chassis.

the beam comprises several elongated beam members that are displaceable relative to

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each other in the longitudinal direction of the beam, and the power arrangement comprises second power means 80e arranged to displace said beam members relative to each other to change the length of the beam;

the load-carrying members are arranged in the vicinity of the a free end of the beam that is distant from the chassis, the load-carrying members are pivotally connected to the beam about a substantially horizontal second axis 90a, and the power arrangement comprises a third power means 80d arranged to cause pivoting of the load carrying members or a part carrying these about said second horizontal axis;

a control device 10e arranged to coordinate the control of said first, second and third power means to achieve the desired movement pattern in a vertical plane of the load carrying members height-wise, length-wise and in the rotating direction.

7. Claims 21-22, 24-25 are rejected under 35 U.S.C. 102(b) as being anticipated by Olson et al. 3,836,025.

Olson et al. discloses a vehicle comprising:

a chassis 2, at least three wheels 76,96 arranged to support the chassis while resting on the ground,

a lifting unit 250 connected to the chassis and having one or more members 304 arranged to carry loads and a power arrangement to raise and lower the load-carrying members relative to the chassis,

a beam 164 carrying the lifting unit and pivotally connected to the chassis about a first substantially horizontal axis 158,

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the power arrangement comprising first power means 245 arranged to pivot the beam around this axis relative to the chassis, the load-carrying members being arranged in a vicinity of a free end of the beam distant from the chassis and pivotally connected to the beam about a substantially horizontal second axis 284,

and the power arrangement comprising separate power means 358 comprising a hydraulic cylinder arranged to cause pivoting of the load-carrying members or a part carrying the load-carrying members about said second horizontal axis,

wherein a control device 320 is arranged to coordinate the control of both said power means to achieve the desired movement pattern in a vertical plane of the load-carrying members height-wise, length-wise and in the rotating direction,

wherein the control device is arranged to carry out said co-ordination so that the load-carrying members maintain a constant angle relative to a horizontal plane during said displacement movement and/or pivoting movements of the beam.

Allowable Subject Matter

8. Claims 12-14, 16, 20, 23 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Response to Arguments

9. Applicant's arguments with respect to claims 6 and 21 have been considered but are moot in view of the new ground(s) of rejection.

10. Regarding the enablement rejection of claims 17-19, applicant has submitted that “one skilled in the art, based upon the disclosure found, e.g., at page 9, lines 31-35 of the specification, can quite clearly understand how to adjust distance between forks 9 with power means 11, as recited in Claim 17”. This is not found persuasive since there is no disclosure as to how the forks can move relative to one another, nor how they would maintain be displaced in the same direction and common displacement with only one actuator. Applicant has submitted no evidence that such a system is known in the art.

Conclusion

11. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

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12. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Kevin Hurley whose telephone number is 571-272-6646. The examiner can normally be reached on Monday-Friday 9:30-5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Lesley Morris can be reached on 571-272-6651. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Kevin Hurley/
Primary Examiner
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October 4, 2007